

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

ERNST MENZER and CAROL
MENZER,

Plaintiffs,

v.

Case No. 3:21-cv-843-TJC-PDB

GEOVERA SPECIALTY
INSURANCE COMPANY,

Defendant.

ORDER

This case is before the Court on Plaintiffs Ernst and Carol Menzer's Notice of Withdrawal as to Count II, Petition for Declaratory Relief (Doc. 10), filed on September 28, 2021. The Notice is unopposed. (Doc. 10). Defendant GeoVera Specialty Insurance Company previously filed a Motion to Dismiss Count II of Plaintiff's [sic] Complaint (Doc. 6), as well as an Answer and Affirmative Defenses (Doc. 7).

In the Notice, Plaintiffs purport to withdraw Count II of the Complaint (Doc. 3). (See Doc. 10). However, the the appropriate mechanism for dismissing one count is to seek leave to file an amended complaint. See Campbell v. Altec Indus., Inc., 605 F.3d 839, 841 n.1 (11th Cir. 2010) ("A plaintiff wishing to eliminate particular claims or issues from the action should amend the

complaint under [Federal] Rule [of Civil Procedure] 15(a) rather than dismiss under Rule 41(a).”) (quoting Klay v. United Healthgroup, Inc., 376 F.3d 1092, 1106 (11th Cir. 2004)).

Accordingly, it is hereby

ORDERED:

1. Plaintiffs shall file an amended complaint omitting Count II no later than **October 15, 2021**.
2. Defendant shall answer the amended complaint no later than **November 5, 2021**.
3. The parties are reminded that their Case Management Report is due within forty days of removal per Local Rule 3.02(b)(2). (See Doc. 5).
4. The Clerk is directed to terminate as **MOOT** Defendant’s Motion to Dismiss Count II of Plaintiff’s Complaint (Doc. 6).

DONE AND ORDERED in Jacksonville, Florida the 29th day of September, 2021.



Timothy J. Corrigan
TIMOTHY J. CORRIGAN
United States District Judge

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Copies:

Counsel of record